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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/665,608	09/20/2000	Deanna Thurman Ongwela		8516

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Deanna T Ongwela
9231 Redbridge Court
Laurel, MD 20723

EXAMINER

YU, JUSTINE ROMANG

ART UNIT	PAPER NUMBER
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3764

DATE MAILED: 11/20/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/665,608

Applicant(s)

ONGWELA, DEANNA THURMAN

Examiner

Justine R Yu

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3, 5, 6 and 8 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5, 6 and 8 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 8/29/02 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 8/29/02 has been entered.
2. This office action is responsive to the amendment filed on 8/29/02. As directed by the amendment, claims 1-3, 5, 6, and 8 were amended, claims 9 and 10 were canceled (see the markup copy), and no claim was added. Thus, claims 1-3, 5, 6, and 8 are presently pending in this application.

Claim Rejections - 35 USC § 112

3. Claims 1-3, 5, 6, and 8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, lines 6-8, it is not clear as whether the "one or more upward projections" is located at the first or second effective working area, or at both areas. In line 10, "friction areas" lacks proper antecedent basis and should be changed to --one or more friction areas--.

In claim 2, it is not clear as what is the difference between "lycra" and "spandex".

In claim 5, it is not clear what structure is being suggested by "exclusively includes".

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In claim 6, "bonding" lacks antecedent basis.

Claim 8 is confusing because it calls "without friction areas attached to said glove at a third effective working area". It appears that the applicant attempts to redefine the structure recited in claim 1. In addition, the term "a third effective working area" is not clear as to whether or not a new working area is being referred. Furthermore, the period after "area" is improper because the claim should be one sentence only.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

fr 5. Claims 1-3, 5, 6, and 8-10 as best understood are rejected under 35 U.S.C. 103(a) as being unpatentable over Hamada (JP 11-114,010) in view of McClurken (2,298,959), and Lohati et al (4,577,625), collectively.

Hamada teaches a massaging glove 1 having front finger portions, back finger portions, and a palm portion, the front finger portions and the palm portion each having a plurality of protrusions (2-8). Notes that the feature of choosing resilient glove is necessary and well known in the art.

Hamada lacks a detail description of the means for joining two pieces of materials to form fingers. However, McClurken in figures 1-3 shows that a glove including finger portions being formed of two pieces materials. Therefore, it would have been obvious to one of ordinary

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skill in the art at the time the invention was made to fabricate Hamada's glove from two pieces material as taught by McClurken, since such feature of forming the finger portions with two pieces material is notoriously old and well known in the art.

Hamada teaches integrally formed massaging elements or protrusions rather than separated protrusions joint to the glove by adhesion. However, Lohati teaches massaging elements 13 being adhesively jointed to the glove 12 (column 3, lines 46-51). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Hamada's glove with protrusions adhesively jointed to the glove as taught by Lohati, since the adhesive is well known for joining two elements together and it appears that the modified Hamada's glove would perform equally well with protrusions being adhesively jointed to the glove.

Hamada further lacks protrusions located on the back portions of the fingers. However, Lohati in figure 20 teaches massaging elements being located in both front and back sides of the massaging device 50. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide Hamada's glove with massaging elements located at both front and back side of the device as taught by Lohati, so that the user could selectively using his front or back portion of his hand to perform the massaging action.

Regarding the size of the protrusions: notes that the feature of choosing a particular sized protrusion, i.e., at least 0.14 inches or 3.5 mm is considered as an obvious design choice within the skill of the art. See In re Rose, 220 F.2d 459, 105 USPQ 237 (CCPA 1955).

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Regarding claim 2, the feature of choosing a particular material for the glove, i.e., Lycra or spandex is considered as an obvious design choice since such materials are well known in the glove art.

Regarding claim 3, the feature of joining two pieces of materials together by sewing is old and well known in the glove art.

Regarding claim 8, the feature of eliminating the massaging protrusions located in Hamada's palm area is considered as an obvious design choice since the court held that omission of an element and its function is obvious if the function of the element is not desired. Ex parte Wu, 10 USPQ 2031 (Bd. Pat. App. & Inter. 1989).

6. Claims 1-3, 5, 6, and 8 as best understood are rejected under 35 U.S.C. 103(a) as being unpatentable over Lohati et al in view of Levine (2,434,044) and Hamada.

Lohati teaches a massaging glove 12 having a plurality of massaging elements or projections 13 being located at the palm and finger areas, the projections being attached to the glove 12 via adhesive (column 3, lines 46-51). Lohati further teaches that the glove 12 being made of canvas or any suitable flexible materials. It is inherent that the glove has at least a certain degrees of resilient property.

Lohati lacks detail description that the finger portion of the glove being made of two pieces materials. However, Levine teaches a method of making the glove including sewing two pieces materials together to form finger portions (figures 1-9). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to fabricate Lohati's

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glove with sewing materials together as taught by Levine, since such technique is notoriously old and well known in the art.

Figure 1 of Lohati lacks projections located on the back of the fingers. However, figure 20 of Lohati shows an embodiment of the device including massaging elements being located at the back of the finger portion. Therefore, the feature of having massaging projections located at the back portion of the finger is considered as an obvious design choice.

Lohati has movable projections (rollers) rather than non-movable projections. However, Hamada teaches a massaging glove having non-movable projections. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to substitute Lohati's rollers with non-movable projections as taught by Hamada, since it is a matter of design for art recognized equivalents. Notes that the size of the projection is considered as an obvious design choice within the knowledge of one skill in the art.

Regarding claim 2, Lohati does not explicitly disclose the glove being made of Lycra or spandex. However, the feature of choosing a glove made of Lycra or spandex is considered as an obvious design choice since the Lycra and spandex are well known materials in the art.

Regarding claim 6, Lohati in column 3, lines 46-51 teaches the recited adhesion.

Response to Arguments

7. Applicant's arguments with respect to claims 1-3, 5, 6, and 8 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

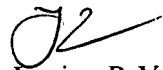
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8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Wessel (CH 618,857,A5), Wood (1,885,572), and Carr (5,765,252) are cited to show different massaging gloves.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Justine R Yu whose telephone number is (703)308-2675. The examiner can normally be reached on 8:30am - 6:00Pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nick Lucchesi can be reached on (703)308-2698. The fax phone numbers for the organization where this application or proceeding is assigned are (703)305-3590 for regular communications and (703)305-3590 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-0858.



Justine R Yu
Primary Examiner
Art Unit 3764

JY
November 12, 2002